

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, MARCH 11, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Kathryn Inouye
Mr. Gerald DeMello

Mr. Timothy Johns
Mr. Ted Yamamura
Mr. Ron Agor

STAFF

Mr. Warren Wegesend, Land
Mr. Richard Rice, DOBOR

Mr. Sam Lemmo, OCCL

OTHER

Mr. Russell Tsuji, Deputy Attorney General
Ms. Linda Chow, Deputy Attorney General
Rep. Dwight Takamine
Mr. Daniel Stone, D-5
Mr. Ken Smith, D-11
Mr. Gilbert Coloma-Agaran, D-11
Ms. Linnel Nishioka, K-3
Mr. Patrick Maloney, D-4
Mr. Scott Atkinson, B-1
Mr. John Renoir, K-1
Mr. Jude Lohmeyer, J-1
Ms. Sharon Reed-Hendricks, J-1

Mr. Desmond Wery, D-7
Mr. Ronald Lavigna, D-10
Mr. Mike Grishom, D-11
Ms. Meredith Ching, K-3
Ms. Sharon Harr, D-12
Ms. Suzanne Case, B-1
Mr. Greg Kugle, K-1
Mr. Todd Dunphy, D-2
Mr. Robert Booth, J-1

Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of March 11, 2005

The Board made the following changes:

Page 3, last paragraph

“Upon questioning by the Board, Don Karleen the landowner [testified] acknowledged that in the past he has built other homes in Hawaii. He [made the Board aware of] further acknowledged an incident on Kauai which occurred on conservation land . . .”

Page 4, first paragraph

“Mr. Karleen stated he did not apply for nor receive either a grading or grubbing permit from the city.”

Page 10, sixth paragraph

“Member Inouye left the meeting.”

Unanimously approved as amended (Johns/DeMello).

Item D-2: Acquisition of Private Lands and Set Aside to Department of Education for Expansion of Haaheo Elementary School, Wainaku, South Hilo, Hawaii, TMK: (3) 2-6-32:01 por. & 27.

Warren Wegesend, Administrator of the Land Division communicated that the Department of Education (DOE) is requesting the Land Board authorize the acquisition and set aside of two parcels- a school lot for the expansion of Haaheo Elementary School and a road lot. The school lot is the only area DOE has identified as having potential for expansion of Haaheo Elementary School. Historically the subject School Lot was used for sugar cane cultivation and has lain fallow for the past 10 years. The Road Lot currently provides the only access to the existing school. Mr. Wegesend made it known the subject lots are encumbered by an easement for electricity and to the Board of Water Supply, DOE has no objects to these encumbrances. Brewer has agreed to dedicate to the State the subject School and Road lots gratis but they are not agreeable to the States standard warranty deed form, taking issue with provisions indemnifying the State for any damages and claims resulting from the release of hazardous materials. To address Brewer’s concern DOE is requesting the Board consider the acceptance of this dedication via a deed form, which omits the Hazardous Waste Indemnity language. In lieu of the standard Hazardous Waste Indemnity language, DOE has agreed to provide a Phase I and Phase II Environmental Studies to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health. Lastly, he noted the land donation would be subject to the review of both the Phase I and Phase II Environmental

Studies and acceptable results. Mr. Wegesend recommended the Board authorize the acquisition of the subject private lands under the terms and conditions cited in the submittal and approve of and recommended to the Governor the issuance of an executive order setting aside the subject lands to Department of Education.

Representative Dwight Takamine noted this has been a four-year process in working to acquire the subject parcel. Representative Takamine let it be known the sticking points have been the need to provide adequate steps to ensure potential liability risks down the road and who would bare these costs. He confirmed the submittal before the Board is an agreement between the landowner and DOE. Representative Takamine indicated the acquisition of the subject land would allow Haaheo Elementary School to begin looking at a Master Plan for the school, which could provide further opportunities for students attending this school.

Written testimony was received from Haaheo School Students, Parents and Faculty.

Unanimously approved as submitted (DeMello/Johns).

Item D-14: Acquisition of Private Lands and Set Aside to Department of Education, Hawaii State Public Library System for a New Kohala Public Library, North Kohala, Island of Hawaii, TMK: (3) 5-4-08:01 por.

Mr. Wegesend acknowledged the Department of Education through the Hawaii State Public Library System is requesting the Board authorize the acquisition and set aside of approximately 3.8 acres for the proposed Kohala Public Library. He conveyed the buildable portion of the site is situated about 100 yards east of the Kohala High and Grammar School Lot. The proposed location and shape of the site is expected to maximize library usage while minimizing impacts on the surrounding neighborhood properties. Mr. Wegesend pointed out the site is zoned A-20a which does not allow for the proposed library use, therefore the Hawaii State Public Library System (HSPLS) has agreed to obtain either appropriate rezoning approval of the site or obtain a Special Use Permit with the County of Hawaii prior to conveyance to the State of Hawaii. The landowner, Surety Kohala Corporation has agreed to dedicate the site to the State gratis however they are not agreeable to the State's standard warranty deed form, taking issue with provisions indemnifying the State for any damages and claims resulting from the release of hazardous materials. HSPLS is requesting the Board consider the acceptance of this dedication via a deed form, which omits the Hazardous Waste Indemnity language. In lieu of this language, HSPLS has agreed to provide a Phase II environmental sampling and analysis plan to the standards required (Phase I has been completed). Acceptance to this land donation will be subject to the review of both the Phase I and Phase II Environmental Studies and acceptable results. Mr. Wegesend recommended the Board authorize the acquisition of the subject private lands and approve of and recommend to the Governor the issuance of an executive order setting aside the lands to Department of Education.

Representative Dwight Takamine thanked the Board for considering this item. He pointed out the acquisition of the subject land has been a long process undertaken by the community.

Written testimony was received from John Kometani, Dawn S. Shibano, and Michael Maddux.

Unanimously approved as submitted (DeMello/Johns).

Item D-7: Set Aside to County of Hawaii for Public Safety and Related Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-01:por. 168.

Mr. Wegesend indicated the proposed 5-acre site is currently a portion of a 30.396-acre remainder parcel that was created as a result of the extension of Mahouli Street. Mayor Kim has requested the subject 5-acre parcel to be used for the site of a new administration and support facility. Mr. Wegesend pointed out the subject site provides very good access to major roadways and virtually all sections of Hilo and staff has no objections to the request. He went on to say due to the topography and a lined drainage ditch along Mohouli Street, staff has included conditions that the design of the proposed road, intersection with Mohouli and infrastructure is subject to Chairperson's approval. The County of Hawaii, Fire Department is aware the proposed use is not a permitted use under the current zoning and will seek to obtain a Special Use Permit. Mr. Wegesend recommended the Board approve of and recommend to the Governor the issuance of an executive order setting aside the subject 5-acre parcel to the county of Hawaii, under the terms and conditions cited in the submittal.

Desmond Wery, Deputy Fire Chief was on hand to answer any questions.

Unanimously approved as submitted (DeMello/Johns).

Item D-5: Sale of Reclaimed (Filled) Land to Daniel and Paulette Stone, at Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-102:24 seaward.

Mr. Wegesend communicated the applicant is one of the pier owners participating in the Kaneohe Piers Amnesty Program. During the preparation of the maps required for the issuance of the pier lease, filled land was found to be encroaching onto the State lands. Documentation was provided to show the seawall was constructed prior to June 12, 1962 and pursuant to Section 171-53(b), HRS the Board is able to sell the reclaimed land to the abutting owner. Mr. Wegesend recommended the Board authorize the sale of the subject reclaimed land to Daniel and Paulette Stone.

Daniel Stone, the applicant was present.

Unanimously approved as submitted (Inouye/Johns).

Item D-10: Grant of Term, Non-Exclusive Easement to Ronald and Kathleen Lavigna for Seawall and Filled Land Purposes, Kaneohe, Oahu, TMK: 4-7-19:47 seaward.

Mr. Wegesend disclosed that the applicants plan to renovate their home. During this enquiry about the shoreline certification staff noted the seawall and filled land encroaching on State land. Due to the fact that the encroachment is over 100 square feet, staff is requesting a fine of \$500. Mr. Wegesend recommended the Board authorize the issuance of a term, non-exclusive easement to Ronald and Kathleen Lavigna, impose a fine \$500 for the illegal encroachment and authorize the Department to accept a deposit in the amount of \$52,785.00 from the applicant.

Ronald Lavigna the applicant was present at the meeting.

Unanimously approved as submitted (Inouye/Johns).

Item D-11: Amend General Lease No. 5731 and Approval of Subordination Agreement Kaheawa Wind Power, LLC for Commercial Wind Farm Purposes, Olowalu-Ukumehame, Lahaina, Maui, TMK: 4-8-01:por.of 01.

Mr. Wegesend reminded the Board at the December 10, 2004 meeting the Board authorized the issuance of a direct lease to Kaheawa Wind Power, LLC for the construction, operation and maintenance of a wind farm facility for the generation of electrical power to be sold to an electrical utility company. Currently, Kaheawa's lenders are requesting by way of a subordination agreement, that the State's right under paragraph 20 in General Lease No. S-5731, to a Lessor's lien on all the improvements placed on the lease premises by the Lessee be subordinate to their mortgage liens. The Department of the Attorney General has no objection to the subordination agreement. In order to verify Kaheawa Wind Power, LLC's compliance with terms and conditions of the lease its lenders are requesting that the State acknowledge such compliance by executing an estoppel certificate. However in reviewing Kaheawa's lease, staff indicated the lessee was not in compliance with paragraph 33 which states that the lessee ensure all buildings and improvements on the leased premises in an amount equal to their replacement cost by the lease commencement date. On the commencement date the land did not contain buildings or improvements of any kind. Staff also noted paragraph 9 of the lease allows the Lessee up to three years to complete construction of the improvements and is requesting amending the suspense date for the fire insurance to coincide with the commencement of construction of the improvements. Kaheawa Wind Power, LLC is also requesting that paragraph 9 of the lease be amended to provide the flexibility to replace contractors as may be necessary to complete construction of the wind farm facility and lastly to accept from the contractors either a bond or guaranty depending on their financial capability due to a change of the project's civil contractor. Mr. Wegesend recommended the Board amend paragraphs 9 and 33 in General Lease No. S-5731 as proposed in the submittal and consent to the mortgage, estoppel and subordination agreement.

The Board noted the original lease did not come before the Board for approval and questioned why the lease amendments need Board approval. Mr. Wegesend noted the subordination agreement requires Board approval.

Kent Smith one of the principal's in Kaheawa Wind Power, LLC came forward to address some of the lease amendments being requested. Mr. Smith went over a timeline as to what happened from the time of the Board approval on December 10, 2004 until today. He noted there are concerns with the availability of turbines because the tax credits in place will soon expire thereby prompting increased sales for the turbines. Mr. Smith asked the Board for a favorable approval of the amendments to the lease so they can proceed with their plans as time is of the essence.

Member Johns recused himself.

Gilbert Coloma-Agaran, counsel for Kaheawa Wind Power indicated there are three portions of the lease documents he would like changed. On paragraph 33 he would like to incorporate the following phrase, "Notwithstanding the foregoing, the Lessee shall not be required to provide the insurance required under this paragraph 33 until the start of construction of any improvements, or the installation of any equipment or other personal property, whichever occurs first." Paragraph 9, which provide some flexibility on actual contractors that will be used for the project. Paragraph 10 regarding bond performances the Lessee would like to post the bond prior to the commencement of construction.

Russell Tsuji, Deputy Attorney General voiced his concern with the proposed language. He told the Board he is picky with regards to the wording of the proposed language change because the Department is being asked to sign off on the estoppel agreement. Mr. Tsuji believes some of the language is vague. He made it known prior to today he has not seen the changes the lessee is requesting on paragraphs 9, 19 and 33 and can not agree to sign off on the agreement today.

Mr. Smith let it be known they are anxious to close the loan so they can move ahead with purchasing the turbines. He noted they would like to close financing by next week therefore the amendments to the agreements need to be finalized soon.

Mike Greshom came forward and told the Board what the Attorney General is portraying as a complicated matter is basically a simple matter, which involves small word changes, which are in the spirit of the December 10, 2004 intent. He told the Board there is no reason to delay signing the agreement with the proposed changes.

Motion to defer item to a later part in the meeting.

Unanimously moved to defer item by the remaining Board members (Inouye/Yamamura).

Item K-3: Enforcement File No. KA-03-29, Regarding Alleged, Unauthorized Ditch Construction; Alleged, Unauthorized Grubbing and Grading:

alleged Clearing of Non-native Trees; and alleged, Unauthorized Access Road Construction Located on State-owned and Private Lands.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) indicated on February 11, 2003 OCCL received a complaint regarding unauthorized land uses occurring on the subject parcel. Later that month staff conducted a site inspection of the affected area. In April staff sent a letter to Kauai Coffee and noted the Department was reviewing the alleged unauthorized land uses. On May 6, 2003, OCCL received a letter from Kauai Coffee conveying the Alexander Dam's main tunnel collapsed. They went on to say representatives from East Maui Irrigation went to assess the damage. They noted there was a possibility of the tunnel collapsing. Kauai Coffee also had a concern with Alexander Dam overflowing and looked at alternative solutions. One solution was to repair an abandoned bypass ditch to be used as an outlet for water accumulating in Alexander Dam. Mr. Lemmo pointed to Exhibits in the submittal, which showed the alleged unauthorized work on the subject parcel. In December Kauai Coffee prepared a report that summarized the emergency work that occurred. The report indicated the bypass ditch was rehabilitated approximately $\frac{3}{4}$ of a mile; approximately 3 acres of grubbing and grading occurred; approximately 33,000 cubic yards of soil was excavated; and approximately $\frac{7}{10}$ ths of a mile of an access road was constructed. In addition, non-native trees were removed. Through the entire process Mr. Lemmo noted that Kauai Coffee has been extremely forthright. Mr. Lemmo recommended the Board find Kauai Coffee in violation of Chapter 183C HRS and Chapter 13-5, Hawaii Administrative Rules and is subject to the conditions listed in staff's submittal.

Meredith Ching, Vice President of Alexander and Baldwin testified on behalf of Kauai Coffee. Ms. Ching acknowledged the seriousness of their actions and deeply regrets what they've done. She also accepted responsibility for their actions and acknowledged that permits should have been obtained for the emergency work Kauai Coffee did. To prevent future violations staff at Kauai Coffee was made aware that permits are required for water repair and construction. In addition classes were established for employees from Kauai Coffee. Ms. Ching gave the Board a short briefing on Alexander Dam and what happened as a result of the collapse of the main tunnel. In summary Ms. Ching noted her concurrence with staff's submittal and asked the Board for their approval of this item.

The Board renumbered the Recommendation Section to reflect the omission of number 3)

Unanimously approved as amended (Agor/Inouye).

Item D-12: Consent to Assign Land Office Deed No. 27709, Lanpar/HTL Associates, Assignor, to Waikoloa Land Lease, LLC, Assignee, Anaehoomalu, South Kohala, Hawaii, TMK: 6-9-07: Portion of the Government Submerged Land of Waiulua Inlet.

Chairperson Young recused himself.

Mr. Wegesend communicated Land Office Deed No. 27709 which is a grant of a perpetual, non-exclusive easement was issued to Lanpar/HTL Associates on October 19, 1988. Global Resort Partners and Lanpar are the current Lessee and Lessor, respectively, under a ground lease that commenced on August 21, 1986. Global Resort Partners is the current Lessee by way of an assignment of the ground lease dated November 5, 1993. At the January 28, 2005 meeting the Board consented to the assignment of Land Office Deed No. 27709 from Lanpar to Global Resort Partners. The easement rights under the Land Office Deed will revert to and revest in Lanpar at the May 30, 2061 expiration of the ground lease. Mr. Wegesend went on to say Lanpar/HTL Associates through its affiliate Waikoloa Land Lease, LLC, is planning to obtain a loan in an amount to be determined and several lenders have expressed an interest in making the loan to Lanpar/HTL Associates. Lanpar/HTL Associates will transfer to Waikoloa Land Lease, LLC the fee simple title of the Land demised to Global Resort Partners under the ground lease. It will also assign to Waikoloa Land Lease, LLC its reversionary interest in the easement rights. This arrangement is necessary because the specific type of financing involved requires the borrower to be a single purpose entity. Mr. Wegesend recommended the Board consent to the assignment of the reversionary easement rights and consent to the mortgage of the reversionary easement rights.

Sharon Harr, counsel for Lanpar/HTL Associates was present to answer the Board's question. Ms. Harr told the Board this type of arrangement is necessary because Lanpar/HTL Associates is seeking financing which will be secured by the lease fee interest and due to their reversionary interest in the granted easement their lender is requesting they assign the reversionary interest to a single purpose entity and secondly they would then pledge that interest to the lender as additional security.

Unanimously approved as submitted by the remaining Board members (DeMello/Agor).

Item D-4: Clarification of Use or Forfeiture of General Lease No. S-3854, Patrick and Nancy Malone, Lessees, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-26:18.

As background information, Mr. Wegesend informed the Board the original agriculture lease was issued in 1964. The lease was subsequently assigned to Patrick and Nancy Maloney on May 26, 1982. On January 23, 2002 staff conducted an inspection of the property and questions were raised about aquaculture being allowed under the definition of the character of use for diversified agriculture. Mr. Maloney stated that aquaculture generally falls under the category of agriculture in the United States and should be allowed under his lease conditions and is not specifically prohibited. Mr. Wegesend noted that staff consulted with the Attorney General's office and they pointed out in 1964 when the lease was issued aquaculture did not even exist and it was never even contemplated. They also noted the definition of diversified agriculture is very specific and a limited type of allowed use, but back in 1964 it was considered appropriate. One

the advice from the Attorney General's Office it was determined that the lease language prevails over statutory definitions. Mr. Wegesend recommended the Board decide whether or not aquaculture is considered a permitted use under the lease and if it is not a permitted use authorize the cancellation of General Lease No. S-3854.

Patrick Maloney, the lessee feels that aquaculture should be allowed on the subject property. He noted disagreement with comments made by staff. Mr. Maloney pointed out he has conducted his own research and found that prior to 1964 there were several koi farms that existed on Oahu. In addition, the first tropical fish farm dated back to the 1930's. So to say aquaculture did not exist prior to 1964 is incorrect. Mr. Maloney also pointed out that agriculture terms are not specific, there are widespread use (i.e. field crops, green house production and landscape plants). In his defense, Mr. Maloney pointed out the terms of lease defines the method of production or use of products as "truck, orchard, nursery, forage or covered crops". He noted the term "truck crops" came about because farmers transported their crops on trucks to the market. In that regard, Mr. Maloney informed the Board he uses his truck to transport his aquaculture to the market so he is a truck farmer and his crop would qualify under the term "truck crop" therefore he would be in compliance with the terms of his lease.

The Board asked the Attorney General's office for a formal opinion on the definition of Diversified Agriculture.

Motion to Defer

Unanimously approved to defer (Inouye/DeMello).

Item B-1: Request for Approval to Develop and Pursue the "Enforcement" Chapter of the Statewide Comprehensive BLNR Coastal Policy.

Gary Moniz, Administrator of the Division of Conservation and Resource Enforcement (DOCARE) disclosed the concurrent theme throughout the Enforcement Chapter concerns issues of government responsibility, education and outreach, intergovernmental cooperation and the marshalling of resources necessary to accomplish these objectives. A second concurrent theme concerns the need for each individual to take the initiative to protect our natural resources and to use these limited resources wisely. Mr. Moniz noted it is DOCARE's preference to foster voluntary compliance and prevent violations from occurring, before they lead to enforcement action. When a violation occurs, the damage to our natural and cultural resource may make recovery difficult or, in some cases, impossible. He believes that the first step in preventing these violations from occurring is to educate the public about our natural resources. He stated his belief that public outreach is a critical component that must go hand in hand with day to day activities and secondly that we must work with all of our counterparts in law enforcement and the community in order to make resource protection work. Mr. Moniz gave the Board information into the "Mauka-Makai Watch Program" and the goals they hope to achieve. Mr. Moniz recommended the Board authorize the department to: 1) Expand outreach and education efforts in a continued effort to deter natural resources related violations; 2) Depending on the scope and scale of alleged violations, encourage all divisions to bring

violations before the Land Board for adjudication, rather than limiting prosecution to the criminal courts; 3) Expand the department's Mauka-Makai Watch program and work with other constituencies to coordinate with communities and individuals that wish to participate and 4) Continue to partner with other constituencies in outreach and resource protection and continue to formalize cooperative agreements between DLNR and other agencies.

Suzanne Case, Director of the Nature Conservancy of Hawaii came forward to state their strong support for the department's efforts to build partnership with the private sector and increase public understanding of the uniqueness of Hawaii's natural resources. They also support the department's desire to increase compliance with existing rules and laws through education and outreach. Ms. Case stated that greater enforcement and stronger penalties for those who knowingly or repeatedly violate the law are critical to the department's outreach efforts.

Scott Atkinson, Director of the Hawaii Program for the Community Conservation Network came forward to testify in support of staff's recommendation. He let it be known there is in existence a network of over 15 coastal communities that are interested in developing programs to support the Department in its efforts to educate the public. Mr. Atkinson applauded the Department's efforts in establishing the Makua-Makai Watch Program.

Unanimously approved as submitted (Johns/Inouye).

Item D-11: Amend General Lease No. 5731 and Approval of Subordination Agreement Kaheawa Wind Power, LLC for Commercial Wind Farm Purposes, Olowalu-Ukumehame, Lahaina, Maui, TMK: 4-8-01:por.of 01.

(Testimony resumed on Item D-11)

Mr. Coloma-Agaran appeared before the Board and informed those present that they believe the Attorney General's office has come up with language to be incorporated into the amendments which would include changes to the three sections discussed earlier today. The changes include the posting of the performance bond and guarantees prior to construction and there would be some flexibility in the language to allow if needed for a change in the contractor.

The Board amended Recommendation A) as follows:

“Amend paragraphs 9, 19 and 33 in General Lease No. S-5731 as proposed, subject to the following:”

Unanimously approved as amended by the remaining Board members (Yamamura/Inouye).

Item M-1: Issuance of Revocable Permit to Royal Hawaiian Movers, Inc for Inconsistent Use, Honolulu International Airport.

Unanimously approved as submitted (Johns/Inouye).

Item K-1: Enforcement File No. OA-04-51, Regarding Alleged, Unauthorized Grubbing, and Grading of Hill Slopes; Violation of Oral and Written Cease and Desist Orders; and Alleged, Unauthorized Road Improvements on Privately-owned Land Located in the State Land Use Conservation District.

Mr. Lemmo went ahead and gave the Board some background information on what previously occurred. Mr. Lemmo noted on June 30, 2004 the department received a call from DOCARE regarding possible unauthorized grading in the subject parcel owned by John Paul Renior. Staff met with Mr. Demoss the farm manager and asked permission to access the subject parcel but Mr. Demoss was unable to provide staff with permission to enter. At 9:55 a.m. DOCARE staff verbally gave Mr. Demoss a cease and desist order to stop work on the subject parcel. Between 11:00 to 12:00 am OCCL staff again verbally gave a cease and desist order to stop the ongoing work. Staff left the premises and returned an hour later and observed activity still being conducted on the subject parcel. DOCARE staff called Mr. Demoss and verbally told him to cease and desist his activities. On July 1, 2004 staff conducted a site inspection of the subject parcel and it revealed that the slopes had been denuded of any vegetation and the hillside slopes had been contoured. On July 2, 2004 staff wrote a letter to Mr. Renoir reiterating that no more work should occur in the Conservation District without the department's approval. Later on November 1, 2004, staff met with Mr. Renior's attorney, Greg Kugle and Mr. Demoss and conducted a site inspection at which time it was confirmed that work had occurred in the Conservation District. Mr. Kugle was verbally asked by staff to submit the approximate area that worked occurred on in the Conservation District and the type of seed hydromulched on the slope. On December 2, 2004, Mr. Kugle responded that the area affected was approximately 6,000 square feet. Mr. Lemmo noted at the February 18, 2005 site inspection it was revealed that work had continued to the subject parcel in the area located behind the greenhouse. Mr. Lemmo recommended the Board find the landowner in violation of Chapter 183C HRS and Chapter 13-5, Hawaii Administrative Rules (HAR) and is subject to the fines listed in the submittal.

Mr. Kugle disagreed with the staff report as far as the fine for the unauthorized roadway improvements. He believed that the road was a nonconforming use and thus was not in need of a permit for maintenance. Mr. Kugle also believed that his client could not be fined for violating the verbal cease and desist orders because his client was not working in the Conservation District.

The Board made the following changes:

- 1. Amended "Findings" 2)**

“That Mr. Renior violated [~~four (4)~~] a Cease and Desist Order[s];

2. Amend Recommendation 1)

“That Mr. Renior violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in [~~six (6)~~] three (3) instances by failing to obtain the appropriate approval for the alleged unauthorized grading and grubbing of the hill slopes, unauthorized road improvements, and violation of a [~~written and verbal~~] cease and desist order[s]. Mr. Renior is fined [~~\$12,000 for six (6)~~] \$6,000 for three (3) Conservation District violations;”

3. Amend Recommendation 3)

“That Mr. Renior shall pay all fines [~~(\$14,500)~~] (\$8,500) within thirty (30) days of the date of the board’s action;”

4. Amend Recommendation 5)

“That Mr. Renior shall apply for an After-The-Fact (AFT) Conservation District Use Application (CDUA) for the [~~unauthorized grading and grubbing action, and~~] roadway improvements within six months from the date of the Board’s action;”

Unanimously approved as amended (Inouye/Yamamura).

The Board informed Mr. Renior and his attorney of their right to a contested case hearing and noted that a verbal request must be made prior to the end of today’s meeting and if they so desired a contest case they will need to followed up with the necessary paperwork within ten (10) days of the Board’s decision.

Item K-2: Alleged Unauthorized Placement of a Shoreline Structure. 59-181E Ke Nui Rd. Haleiwa, Oahu TMK: (1) 5-6-002:035.

Mr. Lemmo recommended the Board find the alleged violated the provisions of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes by failing to obtain the appropriate approvals for the construction of the shoreline structure and be subjected to the conditions listed in staff’s submittal

Todd Dunphy the alleged informed the Board that a friend of his constructed the shoreline structure without his knowledge. Upon learning of this violation from the City’s Planning and Permitting office, Mr. Dunphy removed the structure immediately. Mr. Dunphy let it be known the wood from the structure is gone but the sand bags remain on site.

Motion to Defer

Unanimously approved to defer (Johns/Agor).

The Board recessed at 12:10 p.m. and resumed the meeting at 12:24 p.m.

Item J-1: Issuance of Revocable Permit to Waikiki Yacht Club, a Hawaii non-profit corporation, located at 1599 Ala Moana Boulevard, Honolulu, Hawaii, for Short Term Mooring at Transient Vessel Berths, or an alternative area of Ala Wai Small Boat Harbor as determined by the Division, TMK: (1) 2-3-037:12 (por).

Richard Rice, Administrator for the Division of Boating and Ocean Recreation (DOBOR) announced by letter dated January 14, 2005, the Waikiki Yacht Club offered to make a gift of its existing “D” dock to the State of Hawaii through DOBOR. As a condition of that gift, Waikiki Yacht Club requested the use of short term mooring at Ala Wai Small Boat Harbor to accommodate membership vessels displaced during the exchange of its “D” dock. DOBOR intends to utilize the gifted “D” dock as a replacement for its former “F” dock which has been out of service for a number of years. Staff inspected “D” dock and indicated it is serviceable and can be expected to provide a few years of service. Mr. Rice mentioned in exchange for “D” dock, DOBOR is asking the Board for approval of a short-term mooring for the Waikiki Yacht Club members currently mooring at “D” dock for the duration of their construction period, which is expected to take less than two months. Mr. Rice recommended the Board find that it is in the public interest to withdraw the requested area from service as transient mooring and approve the issuance of a Revocable Permit to Waikiki Yacht Club, to provide short term mooring for membership vessels belong to the Waikiki Yacht Club currently mooring at its “D” dock for a period not to exceed ninety (90) days at the subject transient vessel berths, or an alternative area of the Ala Wai Small Boat Harbor as determined by the Division subject to the conditions listed in staff’s submittal.

Upon questioning by the Board, Mr. Rice indicated there are boats currently docked at the transient dock but there are other spaces available within the state where they are able to dock their boats, one being Keehi Lagoon or other private areas. Mr. Rice confirmed that the dock space would go back to the transient boaters once Waikiki Yacht Club is complete with construction.

The Board asked to be briefed on the pending litigation involving this item. Linda Chow, Deputy Attorney General informed the Board a complaint as well as motion for a temporary restraining order and a motion for preliminary injunction has been filed. Ms. Chow noted that the court is aware of today’s pending Board action and the proposed dock transfer from Waikiki Yacht Club to the State and the Request for a Revocable Permit for the members of the Waikiki Yacht Club. She went on to further indicate that after the temporary mooring permits expire the Department has the right to not issue new permits if there were no spaces available.

When questioned by the Board as to who would be paying the cost to relocate the dock from Waikiki Yacht Club to the Ala Wai, Mr. Rice indicated DOBOR would be footing

the bill. He estimated the cost would be \$30,000 - \$40,000. With regards to the life expectancy of the dock, Mr. Rice felt the dock would be good for another 5-7 years or longer.

Jude Lohmeyer, one of the boat owners that will be displaced by this revocable permit came forward to testify. Mr. Lohmeyer questioned why DOBOR is not able to accommodate both the transient boaters as well as the members of the Waikiki Yacht Club as he feels there is enough space for all. He pointed out the donation of a dock to the State is not a gift as a gift is given freely without any strings attached. Mr. Lohmeyer believes DOBOR is making an acquisition of a dock from the Waikiki Yacht Club, which is outside of the State's procurement rules.

Robert Booth let it be known he was not in opposition to the Waikiki Yacht Club giving the Department an existing dock but he opposes the possibility that their boats could be displaced from the dock and replaced with boats from Waikiki Yacht Club. Mr. Booth informed the Board if they were to allow the Waikiki Yacht Club to moor their boats at the State facility they won't be issuing a revocable permit but instead will be creating a "revocable class" of citizens. Mr. Booth pointed out when issuing a "revocable class" permit you need to meet a rationally basis test which asks the following: 1) show that you have a legitimate government interest and 2) the creation of that "class" narrowly serves legitimate government interest. Mr. Booth believes the boaters being displaced at the Waikiki Yacht Club does not serve the government's interest in receiving a dock for the simple fact that the dock is a donation. If the dock is a donation then creating a "class" in order to obtain that donation is not allowable. Mr. Booth pointed out there is currently fourteen open slips at the Ala Wai that are not being utilized.

1:22 p.m. Member Inouye left the meeting.

It was noted that there are currently seven slips open so Chairperson Young questioned whether the Department could hold those seven slips for the Waikiki Yacht Club instead of keeping it open for transient boaters. Deputy Attorney General Linda Chow informed the Board the Judge ruled that the Department does not have the right to hold the open slips without a revocable permit. The slips are on a first come first served basis.

Mr. Booth clarified that the transient boaters do not want to be displaced but they are willing to share the space with boaters from the Waikiki Yacht Club.

Sharon Reed-Hendricks a boater let it be known it has always been their intention to work together with the Boating division and boaters of the Ala Wai.

The Board amended the Recommendation Section by adding the following:

"4. The Department shall accommodate the current seven (7) transient boaters that are currently docked at the Ala Wai."

The Board asked staff to appear at the next board meeting to give a report on this item.

Unanimously approved as amended (Johns/ Yamamura).

Member Johns left the meeting at 1:30 p.m.

Item D-9: Forfeiture of General Lese No. S-5563, Stephen Sico, Lessee, Portion of Lot 173, Kapaa Homesteads, 3rd Series, Kapaa, Kawaihau, Kauai, TMK: (4) 4-6-08:01.

Motion to withdraw

Unanimously approved to withdraw (Agor/DeMello).

Item D-1: Quitclaim of State's Interests in a Drainage Easement, Grant of Perpetual, Non-Exclusive Easement, and Construction Right-of-Entry to the City and County of Honolulu, Palolo, Honolulu, Oahu, TMK: (1) 3-4-003:Portions of 10 and 37.

Item D-3: Rescind Prior Action of December 16, 1994, under Agenda Item F-4, for the Direct Issuance of a Non-Exclusive Term Easement for Access and Utility Purposes to Mine Teague, Ualapue, Kona, Molokai, TMK: (2) 5-6-02:por. 34

Item D-6: Amend Prior Board Action of June 9, 2000 (Item D-1), Withdrawal from Governor's Executive Order No. 2594, Set Aside to Department of Transportation, Highways Division; Quitclaim of State's Interest if Any, in Hana Highway Widening and Kahului Airport Access Road to the Department of Transportation, Kahului and Wailuku, Maui, TMK: (2) 3-8-79: portion of roads, 3-8-1 portion of roads, 3-8-6; portion of roads.

Item D-8: Consent to Assign Lease Interest of General Lease Nos. S-4313 & S-4314, Bernice N. Nakahara, Successor Trustee of the Thomas T. Nakahara Trust, Assignor, to Bernice N. Nakahara, Trustee of the Residuary Trust Created Under the Thomas T. Nakahara Trust, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-58-23 & 24.

Item D-13: Grant of 55-Year, Term, Non-Exclusive Easement and Construction Right-of-Entry to Castle & Cooke Commercial, Inc. for Drainage Culvert Purposes, Iwilei, Honolulu, Oahu, TMK: (1) 1-5-020:por. 04.

Unanimously approved as submitted (Yamamura/DeMello).

Item F-1: Request for Approval to Hold a Public Hearing to Adopt New Hawaii Administrative Rules, Chapter 13-76, Non-Indigenous Aquatic Species.

Unanimously approved as submitted (Yamamura/DeMello).

Item L-1: Certification of Election of Hamakua Soil and Water Conservation District Director.

Item L-2: Approval for Award of Construction Contract – Job No. J00CF46A, Waimea, Canyon State Park ADA Barrier Removal Waimea, Kauai, Hawaii.

Unanimously approved as submitted (Yamamura/DeMello).

There being no further business, Chairperson Young adjourned the meeting at 8:35 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources